LIBRARY
SUPREME COURT, U. S.

FILED
MAR 10 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

No. 1049, OCTOBER TERM, 1966

NORMAN F. DACEY, *et al.*,

Appellants,

—v.—

GRIEVANCE COMMITTEE OF THE BAR OF FAIRFIELD COUNTY,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS UNDER RULE 16

DAVID GOLDSTEIN
JACOB D. ZELDES
CHARLES M. NEEDLE
955 Main Street
Bridgeport, Conn.
Counsel for Appellee

INDEX

	PAGE
Motion to Dismiss	1
Statement of Case	1
Statute Involved	5
Questions Presented	6
The Appeal Should Be Dismissed As It Raises No Substantial Federal Question	7
I. §51-88 Of The Connecticut General Statutes Is Not Vague So As To Deny Appellants Due Process Of Law Under The Fourteenth Amendment	7
II. The Terms Of The Injunction Clearly Do Not Encroach Upon Appellants' Right Of Freedom Of Speech Under The First And Fourteenth Amendments	12
Conclusion	15

Table of Authorities

Cases:

Clark v. Reardon, 231 Mo. App. 666, 104 S. W. 2nd 407 (1937)	8
Darby v. Mississippi State Board of Bar Admissions, 255 Miss. ——, 185 So. 2nd 684 (1966)	10
Giboney v. Empire Storage and Ice Co., 336 U. S. 490 (1949)	13

PAGE

People v. Schmitt, 126 Colo. 546, 251 P. 2nd 915 (1952) 10

State Bar Association of Connecticut v. Connecticut Bank and Trust Co., 145 Conn. 222, 140 A. 2d 863 (1958) 10, 14

State v. Perkins, 138 Kan. 899, 28 P. 2nd 765 (1934) 7

State v. Thiede, 4 Conn. Sup. 438 (1937) 10

U. S. v. Harriss, 347 U. S. 612 (1953) 8

U. S. v. Petrillo, 332 U. S. 1 (1947) 8

Valentine v. Chrestensen, 316 U. S. 52 (1942) 13

United States Constitution:

First Amendment 6, 12, 13

Fourteenth Amendment 6, 7, 12, 13

Statutes:

Section 51-88 of the General Statutes of Connecticut (1958 Revision) ..... *passim*

Alabama Code §46-42 (1958) 11

Georgia Code Ann. §9-401 (1936) 11

Louisiana Rev. Stat. Ann. §37:212 (1951) 11

Missouri Ann. Stat. §484.010 (1949) 11

Minnesota Stat. Ann. §481.05 (1966) 11

North Carolina Gen. Stat. §84-2.1 (1958) 11

Miscellaneous:

Remedies Available to Combat the Unauthorized Practice of Law, 62 Columbia L. Rev. 501 11

IN THE

Supreme Court of the United States

No. 1049, OCTOBER TERM, 1966

NORMAN F. DACEY, *et al.*,

Appellants,

—v.—

GRIEVANCE COMMITTEE OF THE BAR OF FAIRFIELD COUNTY,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF CONNECTICUT

MOTION TO DISMISS UNDER RULE 16

Motion to Dismiss

The appellee respectfully prays that the appellants' appeal be dismissed for want of a substantial federal question.

Statement of Case

The appellant, Norman F. Dacey, is the president and treasurer of the appellant corporation, Norman F. Dacey

and Associates, Inc., as well as its principal shareholder (F. 2, R. 22).[1] He is not a member of the Bar of any jurisdiction (F. 3, R. 22). His principal business is that of a dealer in the sale of a mutual fund known as the "Wellington Fund" (F. 4, R. 22).

The appellant corporation has a contract with the Wellington Fund, under which the appellant corporation receives a substantial commission on every share of Wellington Fund sold through its offices (F. 109-111, R. 31). If the appellant corporation sells $1000 of Wellington Fund, it receives a commission of $60 (F. 111, R. 32).

In promoting the sale of Wellington Fund, the appellants advertise and solicit to induce members of the general public to consult with them (F. 129, R. 34). When a prospective customer consults with the appellant Dacey or one of his associates, Dacey or his associates discusses with the customer the manner in which he should distribute his property after his death (F. 138, R. 35). They suggest that the customer execute a will and trust agreement, but they do not suggest that he consult an attorney about these matters, for the appellants themselves draft and prepare wills and trust agreements and advise with respect to the operation and legal effect of these instruments (F. 127, R. 34; F. 137, R. 35; F. 150, R. 36).

The appellants suggest to the customer what provisions should be encompassed in his will and trust, advise him as to the legal effect and the laws relating to these instruments, especially the Federal Estate Tax and the Connecticut Inheritance Tax, and give him specific advice

---

[1] References are indicated as follows:
References to the numbered paragraphs of the Finding . . . (F.);
References to the numbered pages of the Record . . . (R.).

regarding the tax consequences of the various provisions in the will and trust (F. 126-127, R. 34; F. 139, R. 35; F. 141, R. 35; F. 145, R. 36). The appellants then draft and type the will and trust agreement, arrange for the execution of the instruments, advise the customer as to the proper manner to execute them and, in general, supervise the execution—all of which takes place in the offices of the appellants (F. 128, R. 34; F. 140, R. 35; F. 142, R. 36; F. 148, R. 36). If the customer has any questions as to the relative advantages and disadvantages of the provisions in the will and trust, the appellants readily give him answers (F. 146-147, R. 36).

The appellants even suggest the bank to be named as executor under all the wills and as trustee under all the trust agreements, and in some of the trust agreements drafted by the appellant Dacey, he is named as co-trustee (F. 117, R. 33; F. 149, R. 36). Upon the appellants' advice, the wills and trust agreements are all deposited in the bank so named (F. 122, R. 33; F. 149, R. 36).

Since the members of the public for whom the appellants draft wills and trust agreements are never represented by attorneys, they rely on the advice and guidance of the appellants with respect to the preparation, execution, legal effect and operation of such instruments (F. 144, R. 36; F. 150, R. 36).

The primary objective and motivation of the appellants in drafting wills and trusts for members of the public is to sell them shares of Wellington Fund (F. 134, R. 35). All of the wills and trusts, therefore, have the same general scheme, although deviations are made in many instances from the forms generally used (F. 119, R. 33). The individual's entire estate, including the proceeds from

his life insurance, pass to the trust and under the terms of the trust agreement, all of the assets are converted into shares of Wellington Fund, which the trustee is instructed to purchase through the offices of the appellants (F. 112-115, R. 32; F. 130-132, R. 34-35). Consequently, the appellants obtain a commission whenever a trust receives the assets of an individual's estate and the trustee purchases Wellington Fund through the appellants' offices pursuant to the trust agreement drafted by the appellants (F. 112, R. 32). The trustee has no choice—he must convert all of the assets into Wellington Fund (R. 112-115, R. 32). Indeed, the appellants will not draft a will or trust agreement for anyone who does not adopt this scheme (F. 116, R. 32-33; F. 135, R. 35). The appellants, therefore, have a direct financial involvement in the disposition of their client's estate (F. 133, R. 35).

The appellants feared that if they advised their prospective customers to consult an attorney before he committed himself to Wellington Fund through the will and trust, they would be obstructed in the preparation of these instruments and would therefore lose a sale (F. 136, R. 35). Accordingly, the appellants did not encourage their prospective customers to consult an attorney (F. 123, R. 33).

The appellants have apparently been very successful in achieving their objective of selling Wellington Fund, for already several millions of dollars have been invested in Wellington Fund through the appellants pursuant to the wills and trust agreements which they have drafted (F. 121, R. 33).

The appellants also billed clients for the legal services which they rendered in drafting wills and trusts, and

even sued them if they didn't pay (F. 100, R. 30-31; F. 104, R. 31).

The appellee, the Grievance Committee of the Bar for the County of Fairfield, instituted this action pursuant to §51-88 of the General Statutes to enjoin the appellants from engaging in the unauthorized practice of law (R. 1-3). The court below found the issues for the appellee and issued a permanent injunction restraining the appellants from engaging in the specific activities which the court concluded constituted the unauthorized practice of law (R. 8-10). The appellants appealed to the Connecticut Supreme Court which affirmed the judgment of the Superior Court.

Statute Involved

Section 51-88 of the General Statutes of Connecticut (1958 Revision) which reads as follows:

> "*Practice of Law by Persons not Attorneys.* No person who has not been admitted as an attorney under the provisions of section 51-80 shall practice law or appear as an attorney at law or as attorney and counselor at law for another, in any court of record in this state, or make it a business to practice law, or appear as an attorney and counselor at law for another in any such court, or make it a business to solicit employment for a lawyer, or hold himself out to the public as being entitled to practice law, or assume, use or advertise the title of lawyer, or attorney and counselor at law, or attorney at law, or counselor at law, or attorney or counselor or attorney and counselor or equivalent terms, in such manner

as to convey the impression that he is a legal practitioner of law or in any manner advertise that he, either alone or together with any other person or persons, owns, conducts or maintains a law office, or office or place of business of any kind for the practice of law. Any person who violates any provision of this section shall be fined not more than two hundred and fifty dollars or imprisoned not more than two months or both. Any person who violates any provision of this section shall be deemed in contempt of court, and the superior court shall have jurisdiction in equity upon the petition of any member of the bar of this state in good standing or upon its own motion to restrain such violation. Nothing herein contained shall be construed as prohibiting a town clerk from preparing or drawing deeds, mortgages, releases, certificates of change of name and trade name certificates which are to be recorded or filed in the town clerk's office in the town in which such town clerk resides or as prohibiting any person from practicing law or pleading at the bar of any court of this state in his own cause.

Questions Presented

1. Whether §51-88 of the General Statutes of Connecticut is vague so that its application to appellants constitutes denial of due process of law.

2. Whether the terms of the injunction deprive appellants of rights under the First and Fourteenth Amendments.

The Appeal Should Be Dismissed As It Raises No Substantial Federal Question

I.

§51-88 Of The Connecticut General Statutes Is Not Vague So As To Deny Appellants Due Process Of Law Under The Fourteenth Amendment.

Within the context of common usage and judicial interpretation by the courts of Connecticut, as well as the courts of several other states, §51-88 of the Connecticut General Statutes, which prohibits the practice of law by those persons who are not attorneys, is sufficiently clear and conveys adequate warning to men of ordinary intelligence of the area of conduct to be proscribed. Indeed, the common man has a general impression of the major activities involved in the practice of law, *State* v. *Perkins,* 138 Kan. 899, 28 P. 2nd 765 (1934), and certainly one of these major activities is the preparation and the giving of advice with respect to such legal documents as wills and trusts. There is virtually no authority anywhere that has ever concluded that the drafting of these instruments or the giving of advice with respect to their operation is not a legal task constituting the practice of law. Appellants' claim, therefore, that they were unknowingly violating §51-88 when they drafted wills and trusts because §51-88 did not specifically prohibit them from engaging in such activities has no substance whatsoever. The fact is that appellants knew that §51-88 prohibited them from drafting such legal instruments but they continued their illegal activities in blatant disregard of this Connecticut Statute and after continual warnings by the appellee to cease and desist from their illegal activities. For appellants now to attempt to

justify their activities on the ground that they were unaware what §51-88 prohibited is frivolous.

The constitutional requirement of statutory definiteness is violated if a statute fails to give a person of ordinary intelligence fair notice that his contemplated conduct is prohibited. *U. S.* v. *Harriss,* 347 U. S. 612, 617 (1953). If the general class of offenses to which the statute is directed is plainly within its terms, the statute will not be struck down as vague or indefinite. *U. S.* v. *Petrillo,* 332 U. S. 1, 7 (1947). The underlying principle is that conduct which could not be reasonably understood to be proscribed should not be prohibited. To determine whether §51-88 of the Connecticut General Statutes conveys notice of prohibited conduct, this Court must examine the statute in the context of well-defined usage and state court construction. It is appellee's claim that on the basis of both common usage and prior statutory construction by the Connecticut courts, §51-88 adequately meets the standards of definiteness set by this Court.

It is fundamental knowledge that the preparation of wills and trusts and the giving of advice with respect to such documents is essentially a legal task. This is true not only because the preparation of these instruments of such consequence requires a high degree of technical expertise, but especially because documents such as wills and trusts require a broad perspective of the totality of the law. *Clark* v. *Reardon,* 231 Mo. App. 666, 104 S. W. 2nd 407 (1937). It is for this reason that the preparation of these instruments has been considered a task to be performed only by those who by law have sufficiently qualified to give legal advice and perform legal tasks. Certainly, the appellant Dacey, who is a self-proclaimed expert in matters such as

wills and trusts, can hardly deny that these documents establish important legal relationships and that their preparation requires the expertise of a lawyer. The best evidence of this is that appellant Dacey's own booklet (Defs. Ex. 2) advises his own prospective customers to consult a lawyer for the preparation of these documents.[2] It is difficult, in view of this, to accept appellant Dacey's claim at this time that he did not understand §51-88's proscription against practicing law to include the drafting of wills and trusts and the giving of advice with respect to such documents, especially since Dacey had been continually

---

[2] Dacey attempted to explain the reason that he did not follow his own advice that his prospective customers should consult an attorney at the Superior Court hearing on May 5, 1964 on appellants' motion to dissolve the temporary injunction:

"The Court: Why don't you send them to an attorney instead of doing it yourself?

The Witness: We did.

The Court: And then what happened?

The Witness: It didn't work out.

The Court: What didn't work out?

The Witness: Sending them to an attorney.

The Court: In what way.

The Witness: Well, people tend to neglect affairs relating to their estate and if we said to a man 'Now you take this to your attorney,' he might agree to do it but just he sometimes doesn't get around to making his will, he doesn't get around to seeing his attorney. Sometimes he did refer it to his attorney and it would be buried on the attorney's desk for many months and by then the client had lost sight of the advantages which we had outlined to him and it would be forgotten . . . Then sometimes an attorney does not believe in trusts at all. We have seen many attorneys who would go so far as to recommend to clients that they discard the beneficiary designation on their life and direct instead that it go into their estate. This made more of an estate for probate purposes and many attorneys seem to dislike trusts because they, a living trust, because they are not involved in probate, and some attorneys don't believe in mutual funds. They don't know about mutual funds generally. They just don't believe in it . . ." (Transcript pp. 121-123, Hearing Before Judge Klau, Superior Court at Bridgeport, May 5, 1964).

warned by the appellee prior to the institution of the action that his activities constituted the unauthorized practice of law.

Moreover, the courts of the State of Connecticut have interpreted §51-88 to prohibit the preparation of legal documents such as wills and trusts and the giving of advice with respect to these documents by those not admitted to the bar. In *State* v. *Thiede,* 4 Conn. Sup. 438, 439 (1937), a lower Connecticut court held that "the drafting of wills has, from time immemorial, been considered an important branch of the practice of law". And in *State Bar Association of Connecticut* v. *Connecticut Bank and Trust Co.,* 145 Conn. 222, 140 A. 2d 863 (1958), the Connecticut Supreme Court, while stating that the basis for judgment in ascertaining whether §51-88 had been violated was to determine whether the acts complained of were commonly understood to be the practice of law, held that the drafting of wills and trusts by trust departments of banks constituted the practice of law within the intendment of §51-88. In the face of such interpretations of §51-88, appellant Dacey can hardly make a good faith argument that he was unaware of the prohibitions of §51-88 when he drafted wills and trusts.

In several other states which have statutes similar to §51-88 which protect the public against the practice of law by non-lawyers, the courts have contributed to the definition of the term. In every instance, the drafting of documents such as wills and trusts and the giving of advice with respect to them has been considered a central feature of the practice of law, e.g., *Darby* v. *Mississippi State Board of Bar Admissions,* 255 Miss. ——, 185 So. 2nd 684, 687 (1966); *People* v. *Schmitt,* 126 Colo. 546, 251 P. 2nd 915 (1952). And while this Court has not as yet had occasion

to pass upon the definiteness of the specific phrase "practice of law" as used in state statutes, no court in any of the more than thirty states which simply prohibit the "practice of law" by those not admitted to the bar has ever considered the statute constitutionally inadequate for lack of definiteness. In fact, several appellate courts have found the statutes sufficiently specific to support penal sanctions against violators.[3] As a matter of fact, in the few states which have elaborated what activities constitute the practice of law,[4] appellant Dacey would have been in clear violation of the statute in each and every state.

No other conclusion can be reached than that §51-88's proscription against the practice of law clearly and unmistakenly encompasses the preparation of wills and trusts, and the giving of advice with respect to the effect and operation of these documents. The best evidence of this fact is the unanimity of all authorities which have ever passed upon the issue. There is no substance, therefore, in appellant Dacey's claim of statutory indefiniteness. Moreover, appellant Dacey's claim is weakened further by the fact that he had adequate warning of the statute's prohibitions but nevertheless deliberately engaged in activities which had already been specifically stipulated as activities constituting the practice of law.

---

[3] *Remedies Available to Combat the Unauthorized Practice of Law*, 62 COLUMBIA LAW REVIEW, 501, 503 n. 12.

[4] *Ala. Code* §46-42 (1958); *Ga. Code Ann.* §9-401 (1936); *La. Rev. Stat. Ann.* §37:212 (1951); Mo. Ann. Stat. §484.010 (1949); Minn. Stat. Ann. §481.05 (1966); *N.C. Gen. Stat.* §84-2.1 (1958).

II.

The Terms Of The Injunction Clearly Do Not Encroach Upon Appellants' Right Of Freedom Of Speech Under The First And Fourteenth Amendments.

In the face of the obvious illegal activities of the appellants, which the Connecticut Supreme Court characterized as "sordid", an injunction was issued which in effect enjoined the appellants from preparing and supervising the execution of wills and trusts, giving advice with respect to the legal effect of such instruments and advertising to induce persons to consult with the appellants concerning the preparation, legal effect and operation of such instruments.[5] This injunction was especially necessary because appellant Dacey stated during the Superior Court hearing that he intended to continue with his activities unless restrained by the Court (F. 151, R. 36-37).

The injunction issued by the court below embraces only acts which fall within the prohibition of §51-88. There is,

---

[5] The specific injunction enjoined the appellants from:

"(a) Engaging in the drafting and/or preparation of wills, trusts, trust agreements and similar documents and/or advising and counseling any person concerning said documents, the effects thereof and the laws applicable thereto.

"(b) Arranging for and supervision of the execution of wills, trust agreements and similar documents and/or advising and counseling any person concerning the legal effect of execution of said documents and the laws applicable thereto.

"(c) Advertising and/or soliciting in any manner to suggest to or induce any persons to consult said Norman F. Dacey and/or Norman F. Dacey and Associates, Incorporated, their officers, associates, agents or servants, concerning the preparation and/or execution of wills, trusts and trust agreements or similar documents and/or concerning the legal effects thereof and/or the operation and effect of laws applicable thereto."

in fact, probably nothing more central to the attorney's traditional role than drafting, arranging for and supervising the drafting of legal documents such as wills and trusts and advising and counseling clients with respect to the effect of those documents and the laws applicable to them. Yet the appellants contend that merely because these acts also involve some sort of communication, they are protected from injunction by the First and Fourteenth Amendments to the United States Constitution.

Appellants' contention that because an activity which is prohibited by state statute involves the physical act of speech, the activity cannot be prohibited by injunction, was rejected by this Court in *Giboney* v. *Empire Storage and Ice Co.*, 336 U. S. 490 (1949). It is inconceivable that members of the public should not be able to be protected against the appellants in the face of their clear violation of §51-88 merely because the violation involves some element of communication. Indeed the injunction in limited fashion merely restrains the appellants from performing those activities which obviously constitute the practice of law and which the appellants have done in the past and have threatened to do in the future unless prohibited.

To the extent that the injunction prohibits acts which involve no element of communication, the appellants' free speech argument is clearly inapplicable. To the extent that this argument purports to apply to paragraph "c" of the injunction, it was foreclosed by *Valentine* v. *Chrestensen*, 316 U. S. 52 (1942) which holds advertising material to be beyond the protective sphere of the First Amendment.

The injunction issued was especially appropriate because not only do the appellants engage in activities which constitute the practice of law in clear violation of §51-88, but

they practice law in the most reprehensible manner. Without any legal training, they advertise to induce persons to consult them concerning the preparation of legal instruments of great consequence. Even more frightening, however, is that they have a direct financial interest in persuading an individual to prepare a will or trust in the manner that they advocate. In view of this, they can hardly give to their clients the undivided allegiance and faithful attention that the Connecticut Supreme Court has demanded that attorneys give to their clients. *State Bar Association of Connecticut* v. *Connecticut Bank and Trust Co.*, 145 Conn. 222, 140 A. 2d 863 (1958). Furthermore, no supervisory body exists to prohibit the appellants from pursuing this course of conduct which unquestionably involves a conflict of interest. In short, the very reasons for which courts have from the very beginning demanded that wills and trust agreements be prepared by attorneys required the Connecticut courts to enjoin appellants from continuing their illegal and unauthorized activities.

The Supreme Court of Connecticut did nothing more than prohibit the appellants from performing acts that were blatantly illegal. Nothing in the injunction in any manner infringes upon the appellants' right of free speech.

Conclusion

For these reasons, then, the appellee respectfully requests that this Court dismiss appellants' appeal for want of a substantial federal question.

Respectfully submitted,

DAVID GOLDSTEIN
JACOB D. ZELDES
CHARLES M. NEEDLE
955 Main Street
Bridgeport, Conn.
Counsel for Appellee

March 8, 1967